EX PARTE OR LATE FILED

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of:	
Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to Mobile-Satellite Service and Radio Determination Satellite Service in the 1610-1626.5 MHz and 2483.5-2500 MHz Bands; and	CC Docket No. 92-166
Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and the 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Service, Including Non-Geostationary Satellites.	ET Docket No. 92-28
Implementation of Section 309(j) of the Communications Act Competitive Bidding	PP Docket No. 93-253

EX PARTE PRESENTATIONS

Pursuant to Section 1.1206 of the Commission's rules and regulations, Motorola Satellite Communications, Inc. ("Motorola") hereby reports that ex parte presentations were made by representatives of Motorola on November 18, 1993, to the persons identified on the attached list. The subject matters discussed during these presentations are reflected in the Joint Comments filed on October 7, 1993, by Motorola and Loral Qualcomm Satellite Services, Inc. ("LQSS") in CC Docket No. 92-166 and ET Docket No. 92-28, and the Comments filed on November 10, 1993, by Motorola in PP Docket No. 93-253. Also discussed was the attached letter from Congressman Dingell to the Chairman of the Commission.

Copies of this notice are being filed with the Secretary and are being sent to the persons identified on the attached list.

Respectfully submitted,

MOTOROLA SATELLITE
COMMUNICATIONS, INC.

Philip L. Malet
Alfred Mamlet
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-6239

Barry Lambergman
Fletcher Heald & Hildreth
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703) 812-0400

Its Attorneys

Michael D. Kennedy
Director, Regulatory Relations
Motorola Inc.
1350 I Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 371-6900

List of Persons Attending Presentations

Chairman James H. Quello Dr. Brian Fontes Rudolfo Baca	Room 802
Commissioner Ervin S. Duggan Randall S. Coleman	Room 832
Byron F. Marchant Office of Commissioner Barrett	Room 844

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515-6115

November 15, 1993

The Honorable James H. Quello
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Chairman:

I am writing in response to the Commission's Notice of Proposed Rule Making in PR Docket No. 93-253, which requests comments pertaining to the establishment of competitive bidding procedures to choose among mutually exclusive applications of initial licenses.

As you are well aware, this particular rulemaking is of critical importance, inasmuch as it will establish the ground rules for a new method of awarding radio licenses. I commend the Commission for moving forward on this Notice so expeditiously. I am aware that the new statute imposed tight deadlines on the Commission, and I would like to state at the outset that the Commission has done an extraordinary job drafting an extremely complex Notice in a very short timeframe.

I am, however, concerned about two aspects of the Notice. It is my hope that these comments will assist the Commission in its implementation of competitive bidding in a manner that is consistent with the intent of Congress.

My first concern occurs at paragraphs 28 and 29 of the Commission's Notice. The statutory text requires, and the Notice recognizes, that in order for there to be competitive bidding, that the subject spectrum enable subscribers "to receive communications signals" or to "transmit directly communications signals" [emphasis added].

That Congress included the term "directly" was not inadvertant. The term was incorporated into the legislation in order to distinguish between those who subscribe to spectrum-

based services and others whose use of the spectrum is incidental to some other service. In my view, the term "directly" in this instance in essence requires that subscribers operate a transmitter themselves.

Paragraphs 28 and 29 discuss the Commission's proposal "that licenses used in services as an intermediate link in the provision of a continuous, end-to-end service to a subscriber would be subject to competitive bidding". Inasmuch as these links are incidental to the provision of a different, and not necessarily spectrum-based, service, subjecting these licenses to competitive bidding procedures would be inappropriate.

My second concern relates to the proposed "Big LEO" satellite systems in the Mobile Satellite Service ("MSS"). It is clear to me that these systems will advance important U.S. policy goals, including maintaining America's lead in important technologies and the expansion of the existing telecommunications infrastructure. They will also promote the creation of new jobs throughout the industry and enhance the global competitiveness of the United States in mobile communications technology.

I am concerned, however, that the Commission's limited discussion of the treatment of the pending Big LEO applications in the competitive bidding Notice is an indication that the Commission may be misinterpreting the intent of Congress with respect to licensing Big LEO systems. In its Notice, it appears that the Commission has failed to take notice of important statutory language in the new law, as well as relevant legislative history, which requires the Commission to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means in order to avoid mutual exclusivity in pending application and licensing proceedings, and thereby avoid auctions and lotteries.

As a general proposition, by granting to the Commission the authority to assign licenses by auction, it was never the intent of Congress for auctions to replace the Commission's responsibilities to make decisions that are in the public interest. Rather, the competitive bidding authority was always intended to address those situations where the Commission could not either narrow the field of applicants or select between applicants based upon substantive policy considerations.

The Committee expects the Commission to continue to exercise its responsibilities to determine how spectrum should be used in the public interest and who are the best qualified to undertake that use.

To underscore that auctions are not a substitute for reasoned decision-making, the new statute specifies (at Section

309(j)(6)(E)) that the Commission is not to abandon its traditional methods of avoiding mutual exclusivity. Congress clearly had the Big LEO proceeding in mind when it added this language to the bill because it believed that mutual exclusivity could be avoided in that proceeding.

A brief review of the relevant legislative history should assist the Commission in its deliberations in both the competitive bidding docket and the Big LEO proceeding. In the original House Report language (House Report No. 103-111, at p. 258) from which this statutory subsection was drawn, the Committee stated:

> In connection with application and licensing proceedings, the Commission should, in the public interest, **continue to use engineering solutions, negotiation, threshold qualifications, service rules, and other means in order to avoid mutual exclusivity.** The licensing process, like the allocation process, should not be influenced by the expectation of federal revenues and **the Committee encourages the Commission to avoid mutually exclusive situations, as it is in the public interest to do so. The ongoing MSS (or "Big LEO") proceeding is a case in point.** The FCC has and currently uses certain tools to avoid mutually exclusive licensing situations, such as spectrum sharing arrangements and the creation of specific threshold qualifications, including service criteria. These tools should continue to be used when feasible and appropriate [emphasis added].

In light of the provisions of the House Report, the final statutory language signed by the President, and the presence of viable spectrum sharing plans, such as the one contained in Motorola Satellite's and Loral Qualcomm's joint submission, it is clear that the Commission has an obligation to attempt to avoid mutual exclusivity among qualified applicants in the Big LEO proceeding. While the contents of paragraph 156 of the Notice may provide a healthy incentive for the various applicants to conclude their negotiated rulemaking successfully, I trust that the Commission is aware of its own responsibilities in this regard.

As I noted at the outset, the Commission's Notice represents an extraordinary effort in a very tight timeframe, and I congratulate you for the job that you have done. I ask that a copy of this letter be made part of the Commission's record in

this proceeding, and hope that it is useful to you as the Commission deliberates on the appropriate uses of its competitive bidding authority. If I or the Committee staff can be of any assistance to you, please do not hesitate to contact me. I look forward to reviewing your decision, and to receiving your response to these comments.

Sincerely,

JOHN D. DINGELL
CHAIRMAN